

GLASGOW COUNCIL FOR THE VOLUNTARY SECTOR (GCVS)

TERMS AND CONDITIONS OF SUPPLY OF SERVICES

THIRD SECTOR ORGANISATIONS

These Conditions do not apply to consumers and apply to business-to-business transactions only.

The general terms of these Conditions apply to all Contracts (Part 1). Please read the general terms carefully. There are then specific parts that will or will not apply to the Contract depending on which Services the Customer has purchased from GCVS. Please read the relevant parts that apply.

PART 1: GENERAL TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply to the Contract.

Affected Party has the meaning given to it at clause 16.9 of these Conditions.

Business Day means a day other than a Saturday, Sunday or public holiday in Scotland when banks in Glasgow are open for business.

Business Hours means the period from 9.00 am to 5.00 pm on any Business Day.

Charges means the charges in respect of the Services.

Communications Content means any content provided to GCVS from time to time for the Services to enable GCVS to send communications on behalf of the Customer.

Conditions means the terms and conditions set out in this document as amended from time to time by GCVS.

Confidential Information means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives whether before or after the date of the Contract in connection with the Contract including but not limited to: (a) the existence and terms of the Contract; (b) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); (c) any information developed by the parties in the course of carrying out the Contract; and (d) any information provided by or otherwise made available by any of GCVS's suppliers and/or sub-contractors.

Consultancy Services means the HR Consultancy Service and/or the H&S Consultancy Service individually, collectively in part or in whole.

Contract means the contract between GCVS and the Customer for the sale and purchase of the Services in accordance with the Service Level Agreement and these Conditions.

Control has the meaning given in section 1124 of the Corporation Tax Act 2010, and **controls, controlled** and the expression **change of control** shall be construed accordingly.

Controller, processor, data subject, personal data, processing and **appropriate technical and organisational measures** shall have the meanings given to them in the Data Protection Legislation.

Customer means the organisation or entity who purchases the Services from GCVS, and as designated in the Contract.

Customer Default has the meaning given to it at clause 3.3 of the Conditions.

Customer Equipment means any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services including any such items specified in the Contract.

Customer Materials means all documents, information, items and materials in any form which are provided by the Customer in connection with the Services, including any such items specified in the Contract.

Customer Personal Data means (a) any personal data provided by the Customer to GCVS to perform the Services, or (b) any personal data accessed by or processed by GCVS or its sub-processors to provide the Services to the Customer.

Data Protection Legislation means all applicable data protection and privacy legislation (including, without limitation, the privacy of electronic communications) in force from time to time which apply to a party relating to the use of Customer Personal Data, including without limitation the UK Data Protection Legislation, and the guidance and codes of practice issued by a relevant supervisory authority, and which are applicable to a party.

Deliverables means an output of the provision of Services as specified in the Service Level Agreements.

Employees means any employees whose contract of employment are to transfer to GCVS from the Customer as at the commencement date of the relevant Services.

Employee Liability Information: in respect of each of the Employees:

- (a) the identity and age of the Employee;
- (b) those particulars of employment that an employer is obliged to give the Employee under section 1 of the Employment Rights Act 1996;
- (c) information about any disciplinary action taken against the Employee and any grievances raised by the Employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes or any other applicable code or statutory procedure applied, within the previous two years;
- (d) information about any court or tribunal case, claim or action either brought by the Employee against the Customer within the previous two years or where the Customer

has reasonable grounds to believe that such action may be brought against GCVS arising out of the Employee's employment with the Customer; and

- (e) information about any collective agreement which will have effect after the commencement date of the relevant Services in relation to the Employee pursuant to regulation 5(a) of the Employment Regulations.

Employment Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation: acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation, imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; collapse of buildings, fire, explosion or accident; and interruption or failure of utility service.

GCVS means GLASGOW COUNCIL FOR THE VOLUNTARY SECTOR, incorporated and registered in Scotland with company number SC097679, and a Scottish registered charity with charity number SC006923, whose registered office is at Albany Centre, 44 Ashley Street, Glasgow, Scotland, G3 6DS.

GCVS Materials has the meaning given to it at clause 3.2.6 of these Conditions.

HMRC means HM Revenue and Customs.

HR Consultancy Service means those human resources related services that fall outwith the scope of the HR Subscription Service.

HR Service the HR Subscription Service and the HR Consultancy Service.

HR Subscription Service means the human resources related services as further detailed in the Service Level Agreement.

H&S Consultancy Service means those health and safety related services that fall outwith the scope of the H&R Subscription Service.

H&S Service means the HR Subscription Service and the HR Consultancy Service.

H&S Subscription Service means the health and safety related services as further detailed in the Service Level Agreement.

Inappropriate Content means any content which infringes any applicable laws, regulations or third party rights (including, without limitation, material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing or in breach of any third party Intellectual Property Rights).

Intellectual Property Rights means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for

passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Membership Plus Contract means a written agreement between the Customer and GCVS whereby the Customer benefits from GCVS's Membership Plus offering;

Order means the Customer's order or request for Services in accordance with clause 2.2 of these Conditions.

Payroll Service means the payroll related services as further detailed in the Service Level Agreement.

Payment Terms means the payment terms detailed in the Service Level Agreement and, if silent, detailed in these Conditions.

Representatives means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.

Service Level Agreement means the document issued by GCVS which details the Services, Charges, Payment Terms and related information.

Services means the services detailed in the Contract which may include: HR Service, H&S Service and/or Payroll Service, individually, collectively in part or in whole.

Subscription Services means the HR Subscription Service, H&S Subscription Service and/or the Payroll Service individually, collectively in part or in whole.

Third Party IP means any Intellectual Property Rights owned by a third party.

UK Data Protection Legislation means all applicable data protection and privacy legislation (including, without limitation, the privacy of electronic communications) in force from time to time in the UK including without limitation, the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (**UK GDPR**), the Data Protection Act 2018 (**DPA 2018**), and The Privacy and Electronic Communications (EC Directive) Regulations 2003 (**PECR**).

VAT has the meaning given to it at clause 5.9 of these Conditions.

- 1.2 Clause and Schedule headings do not affect the interpretation of the Contract.
- 1.3 References to clauses are (unless otherwise provided) references to the clauses of these Conditions.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.6 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time.

1.7 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. BASIS OF CONTRACT

2.1 Any proposal given by GCVS shall not constitute an offer and is only valid for such period stated in the proposal or where the proposal is silent, for a period of one (1) month from the date of issue of the proposal.

2.2 An order by a Customer (whether by way of order form, subscription form, email or otherwise) constitutes an offer to purchase the Services in accordance with the relevant Service Level Agreement and these Conditions ("**Order**").

2.3 An Order shall only be deemed to be accepted when GCVS issues written acceptance of the Order at which point the Contract shall come into existence.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.5 The Customer is solely responsible for ensuring that the terms of Orders and any applicable specifications are complete and accurate.

2.6 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

2.7 Any samples, drawings, descriptive matter or advertising issued by GCVS, and any descriptions or illustrations contained in GCVS's catalogues, brochures and website, are issued or published for the sole purpose of giving an approximate idea of Services described in them. They shall not form part of the Contract or have any contractual force.

2.8 In the event of any conflict between a Service Level Agreement and these Conditions, the terms of the Service Level Agreement shall have precedence unless otherwise agreed between the parties in writing.

2.9 In the event of any conflict between the general terms and the specific terms, the specific terms shall have precedence in relation to the specific Service to which those specific terms relate.

3. CUSTOMER'S RESPONSIBILITIES

3.1 The Customer acknowledges and agrees that GCVS's ability to provide the Services is dependent upon the full and timely co-operation of the Customer, as well as the accuracy and completeness of any information to be provided by the Customer to GCVS.

3.2 The Customer shall, and hereby warrants and undertakes that it shall:

3.2.1 co-operate with GCVS in all matters relating to Services and comply with GCVS's instructions;

- 3.2.2 ensure that the terms of the Order and any information it provides otherwise to GCVS is complete and accurate;
 - 3.2.3 provide GCVS in a timely manner with such documents, information, materials and items in any form as GCVS may reasonably require in order to supply the Services (including but not limited to any documents, information, items and materials required under the Contract) and ensure that such information (including without limitation the Customer Materials) is complete and accurate;
 - 3.2.4 before the date on which the Services are to start, obtain and maintain during the term of the Services, all necessary licences, permissions and consents and comply with all relevant legislation in relation to the Services;
 - 3.2.5 comply with all applicable laws, including without limitation, health and safety laws;
 - 3.2.6 keep and maintain all materials, equipment, documents and other property of GCVS ("**GCVS Materials**") at the Customer's premises in safe custody at its own risk, maintain GCVS Materials in good condition until returned to GCVS, and not dispose of or use GCVS Materials other than in accordance with GCVS's written instructions or authorisation;
 - 3.2.7 not do or omit to do anything which may cause GCVS to lose (or otherwise have conditioned or restricted) any licence, authority, consent or permission on which it relies for the purposes of conducting its business;
 - 3.2.8 notify GCVS in writing immediately upon the occurrence of a change of Control of the Customer;
 - 3.2.9 in performing its obligations under this Contract, comply with all applicable laws, statutes, regulations and codes from time to time in force;
 - 3.2.10 comply with any additional obligations detailed in the Service Level Agreement or other documents made available by GCVS from time to time;
 - 3.2.11 not do, omit to do, or say anything which harms or could foreseeably harm the reputation of GCVS (in the opinion of GCVS);
 - 3.2.12 ensure that all the Customer Equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant standards or requirements;
 - 3.2.13 pay the Charges and any other sums owed to GCVS in a timely manner and no later than the due date for payment; and
 - 3.2.14 not permit a third party to use and/or otherwise benefit from the Services.
- 3.3 If GCVS's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
 - 3.3.1 GCVS shall, without limiting its other rights or remedies, have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its

obligations in each case to the extent the Customer Default prevents or delays GCVS's performance of any of its obligations;

3.3.2 GCVS shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from GCVS's failure or delay to perform any of its obligations; and

3.3.3 the Customer shall reimburse GCVS on written demand for any costs or losses sustained or incurred by GCVS arising directly or indirectly from the Customer Default.

3.4 The Customer shall not, without the prior written consent of GCVS, at any time from the date of the Contract to the expiry of twelve (12) months after the termination or expiry of the Contract, solicit or entice away from GCVS or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of GCVS in the provision of the Services.

3.5 The Customer shall be solely responsible for the accuracy and completeness of any Communications Content. The Customer shall ensure that the Communications Content does not contain any Inappropriate Content and that it complies with all legal requirements. The Customer shall indemnify GCVS against all damages, losses and expenses arising as a result of any action or claim related to the Communications Content.

4. SERVICES

4.1 GCVS agrees, subject to the Customer's compliance with clause 3, that it will:

4.1.1 use reasonable endeavours to provide the Services in accordance with the Service Level Agreement in all material respects; and

4.1.2 use reasonable endeavours to meet any performance dates agreed to by GCVS in the Service Level Agreements but any such dates shall be estimates only and time for performance by GCVS shall not be of the essence of the Contract.

4.2 GCVS reserves the right to amend the Services if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and GCVS will notify the Customer in any such event.

5. CHARGES AND PAYMENT

5.1 In consideration of the provision of the Services, the Customer shall pay the Charges to GCVS.

5.2 The Charges for the Subscription Services shall be calculated as set out in the Service Level Agreement.

5.3 The Charges for the Consultancy Services shall be calculated on a time and materials basis in accordance with GCVS's standard rates as set out in the Service Level Agreement or otherwise notified in writing by GCVS.

5.4 Unless otherwise agreed by GCVS in writing in advance, the Charges exclude the following which shall be payable by the Customer in addition to the Charges:

- 5.4.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom GCVS engages in connection with the Services;
 - 5.4.2 the cost to GCVS of any materials or services procured by GCVS from third parties for the provision of the Services;
 - 5.4.3 the cost and expense of any assistance which GCVS agrees to provide to enable the Customer to comply with its obligations under the Data Protection Legislation; and/or
 - 5.4.4 any other costs and expenses excluded from the Charges by GCVS in writing.
- 5.5 GCVS may charge the Customer in accordance with the Payment Terms or if not specified, at GCVS's sole discretion on or at any time before or after completion of delivery or performance.
- 5.6 The Customer shall pay the Charges on the date due in full and in cleared funds to a bank account nominated in writing by GCVS. Time for payment by the Customer shall be of the essence of the Contract.
- 5.7 The Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of Scotland's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.8 Notwithstanding the foregoing in clause 5.7, GCVS reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998. The Customer will also be liable to pay all costs, expenses and outlays incurred by GCVS in collecting any such overdue payments and interest thereon.
- 5.9 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by GCVS to the Customer, the Customer shall, on receipt of a valid VAT invoice from GCVS, pay to GCVS such additional amounts in respect of VAT as are chargeable on the supply of the Services or any Deliverables at the same time as payment is due for the supply of the Services or any Deliverables.
- 5.10 GCVS reserves the right to refuse to perform the Services until the relevant amount(s) outstanding is/are paid.
- 5.11 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). GCVS may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by GCVS to the Customer.
- 5.12 GCVS reserves the right to increase the Charges in accordance with the Payment Terms and/or with effect from the start of each financial year (1 April).
- 5.13 Without prejudice to clause 5.12, GCVS reserves the right to increase the Charges at any time to reflect any material increase in the cost of delivery of the Services upon sixty (60) days' prior written notice.

6. THIRD PARTY PROVIDERS

- 6.1 The Customer understands and agrees that the Customer is not required to engage with and/or appoint any solicitor, occupational health provider, counselling provider, health and safety contractor and/or other third party as recommend by GCVS and/or referred by GCVS, and/or who may offer the Customer preferential rates or terms due to the Customer being a recipient of the Services ("**Third Party Provider**"), and the Customer understands and agrees:
- 6.1.1 that its decision to engage and/or appoint a Third Party Provider shall be on the basis of its own due diligence of the Third Party Provider and independently of any representations made by GCVS;
 - 6.1.2 it is solely responsible for negotiating and agreeing the commercial and legal terms of any engagement with and/or appointment of the Third Party Provider;
 - 6.1.3 GCVS has no role or responsibility in relation to any commercial and legal terms agreed between the Customer and the Third Party Provider, including without limitation, as related to costs, service provision and/or delivery timescales; and
 - 6.1.4 GCVS has no liability and/or responsibility for any actions or omissions of the Third Party Provider.
- 6.2 The Customer agrees, to hold harmless, waive and release GCVS and its officers, agents, representatives, and successors from any responsibility, liabilities, demands, or claims of any kind arising out of any referral or recommendation by GCVS and/or any actions or omissions of the Third Party Provider.

7. ACCOUNT DETAILS AND TEMPLATES

- 7.1 If the Customer is provided with a user identification code, a password and/or other log-in details ("**Account Details**") the Customer must treat such Account Details as confidential and must not disclose it to any third party.
- 7.2 GCVS reserves the right to disable any Account Details, whether chosen by the Customer or allocated by GCVS, at any time, if in GCVS's opinion the Customer or any of its personnel have failed to comply with any of the provisions of the Contract or any terms of use made available by GCVS from time to time.
- 7.3 GCVS is giving the Customer personally the right to use the Account Details for the Customer and the Customer may not otherwise transfer the Account Details someone else, whether for money, for anything else or for free.
- 7.4 Without limitation to clause 8.1, all Intellectual Property Rights in any templated documents made available from GCVS from time to time in the provision of the Services belongs to GCVS (or its licensors) and the rights in the templates are licensed to the Customer in accordance with clause 8.1.
- 7.5 GCVS may update and change its templated documents from time to time to reflect changes to law or practice, and/or GCVS's business priorities. It is the Customer's sole responsibility to (a) ensure that it uses the most of to date version of any template documents made available by GCVS from time to time, and (b) to decide whether to update the Customer's own documents based on any changes to the templated documents.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 Unless otherwise expressly agreed by GCVS in writing, all Intellectual Property Rights in or arising out of or in connection with the Services (including as related to any Deliverables) shall be owned by GCVS or its relevant licensors (other than any Intellectual Property Rights in the materials provided by the Customer) and GCVS hereby grants the Customer a non-exclusive, personal and revocable licence to use such Intellectual Property Rights for the purpose of receiving the Services until the Contract expires or is terminated.
- 8.2 The Customer acknowledges that, in respect of any Third Party IP:
- 8.2.1 the Customer's use of any such Third Party IP is conditional on GCVS obtaining a written licence from the relevant licensor which may incur a fee, which fee shall be payable by the Customer in addition to the Charges;
 - 8.2.2 GCVS does not guarantee, represent nor warrant that it shall be able obtain a licence which permits the Customer to use such Third Party IP and/or that such licence will be in accordance with any licence terms requested by the Customer;
 - 8.2.3 unless otherwise agreed by GCVS in writing, GCVS shall have no responsibility for renewing the licence of any Third Party IP upon the relevant renewal date, but where such renewal is required by the third party licensor of the Third Party IP (on an automatic renewal basis or otherwise), the Customer shall be responsible for any renewal fee; and
 - 8.2.4 the Customer agrees, to hold harmless, waive and release GCVS and its officers, agents, representatives, and successors from any responsibility, liabilities, demands, or claims of any kind arising out of any actions or omissions of the third party licensor of the Third Party IP.
- 8.3 All GCVS Materials are the exclusive property of GCVS.
- 8.4 In relation to the Customer Materials, the Customer grants GCVS a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the purpose of providing the Services to the Customer.
- 8.5 The Customer warrants that:
- 8.5.1 the receipt, use, development and modification of the Customer Materials shall not infringe the rights, including any Intellectual Property Rights, of any third party and shall indemnify GCVS against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred or paid by GCVS arising out of or in connection with any claim brought against GCVS for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use of the Customer Materials; and
 - 8.5.2 it shall comply with all terms of any licence granted by a third party in relation to Third Party IP (and any other conditions or instructions related to such Third Party IP) and shall indemnify GCVS against all liabilities, costs, expenses, damages and

losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred or paid by GCVS arising out of or in connection with any claim brought against GCVS for actual or alleged infringement of Third Party IP and/or breach of any licence granted by a third party in relation to Third Party IP (and/or any other conditions or instructions related to such Third Party IP).

9. CUSTOMER PERSONAL DATA

- 9.1 This clause 9 sets out the documented instructions from the Customer and any additional or alternative instructions shall be jointly agreed between the parties in writing. The Customer instructs GCVS to process the Customer Personal Data for all purposes required to fulfil the Services. The Service Level Agreements describes the subject matter and duration of the processing by GCVS, the nature and purpose of the processing by GCVS, and the types of personal data and categories of data subjects processed by GCVS.
- 9.2 The Customer acknowledges and agrees that GCVS may engage sub-processors in connection with the provision of the Services. If the Customer reasonably objects to GCVS's use of a new sub-processor on justifiable grounds that this new sub-processor will not be able to comply with the terms of this clause 9, the Customer shall notify GCVS in writing and within five (5) days after receipt of GCVS's notice of its intention to appoint the new sub-processor (which notice may be sent by email, or may be made by way of general public notification on GCVS's website or through other reasonable public means). The Customer's failure to object in writing within such time period shall constitute approval to use the new sub-processor. The Customer acknowledges that the inability to use a particular new sub-processor may result in delay in performing the Services and/or inability to perform the Services, or fees payable for the Services may require to be increased, and accordingly the parties hereby agree that GCVS may, upon written notice to the Customer, terminate performance of the Services in whole or in part or increase the Charges for delivery of the Services.
- 9.3 Customer instructs GCVS (and authorises GCVS to instruct each sub-processor) to transfer Customer Personal Data to any country or territory, as reasonably necessary for the provision of the Services.
- 9.4 If a change in any Data Protection Legislation prevents either party from fulfilling all or part of its obligations, the parties may agree to suspend the processing of the Customer Personal Data until that processing complies with the new requirements. If the parties are unable to bring the Customer Personal Data processing into compliance with the Data Protection Legislation within one (1) month, either party may terminate the related Services on not less than thirty (30) days on written notice to the other party.
- 9.5 Upon the expiry or termination of the Contract, GCVS will delete or anonymise all Customer Personal Data within such period as outlined in the Service Level Agreement, or if silent, within three (3) months of the date of expiry or termination. If the Customer requires a copy of the Customer Personal Data before it is deleted by GCVS, the Customer must give GCVS written notice within such period as outlined in the Service Level Agreement, or if silent, within two (2) weeks of expiry or termination of the Contract, and GCVS will use all reasonable endeavours to supply such a copy, at the Customer's sole expense. Where applicable law, regulation or government requirements prevents GCVS from returning or

destroying all or part of the Customer Personal Data, GCVS shall not be required to do so. Where GCVS requires Customer Personal Data for the establishment, exercise or defence of legal claims it shall not be required to return or delete Customer Personal Data.

- 9.6 The Customer warrants, represents, acknowledges and agrees that:
- 9.6.1 the Customer shall comply with all applicable requirements of the Data Protection Legislation;
 - 9.6.2 GCVS's expected use of the Customer Personal Data for performance of the Services and as specifically instructed by the Customer shall at all times comply with the Data Protection Legislation;
 - 9.6.3 the Customer shall have sole responsibility for the Customer Personal Data shared with GCVS, including but limited to, its accuracy, reliability, availability and ongoing security;
 - 9.6.4 the transfer and sharing of the Customer Personal Data with/to GCVS is lawful and the Customer has a legal basis under the Data Protection Legislation for the transfer and sharing of the Customer Personal Data with GCVS, including, but not limited to, collecting and maintaining valid consents where relevant;
 - 9.6.5 the Customer shall take appropriate technical and organisational measures to protect the security of the Customer Personal Data, including ensuring that Customer Personal Data is securely transferred to GCVS;
 - 9.6.6 the Customer has assessed the level of security appropriate to the processing by GCVS and agrees that the security measures to be applied by GCVS are consistent with such assessment;
 - 9.6.7 it shall promptly notify GCVS of any action GCVS must take to assist it with ensuring compliance with its obligations under Data Protection Legislation, including with request to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators.
- 9.7 In the event that GCVS agrees to allow for and reasonably contribute to audits conducted by the Customer under the Data Protection Legislation, such audits shall be subject to the following requirements:
- 9.7.1 Customer must provide at least sixty (60) days written notice to GCVS of an intended audit;
 - 9.7.2 Customer may perform such audits a maximum of once in any 12 month period during the term of the Contract unless otherwise agreed between the parties in writing;
 - 9.7.3 Customer may use a third party to perform the audit on its behalf, provided the third party executes a confidentiality agreement acceptable to GCVS;
 - 9.7.4 audits must be conducted during regular business hours and must not unreasonably interfere with GCVS's business activities;

9.7.5 GCVS shall not be required to breach any duties of confidentiality owed to its employees or any third parties; and

9.7.6 the audits shall be conducted at the Customer's sole cost and expense.

9.8 This clause 9 is in addition to, and does not relieve, remove or replace, the Customer of its obligations and liabilities under the Data Protection Legislation.

9.9 The Customer consents to communication (in addition to post and telephone) by normal unsecured email and/or text and/or other electronic communications and each party accepts the risks associated with using such methods of communication, including the risks of unauthorised access, interception, computer viruses and malware. GCVS shall not be liable for any costs, loss or liabilities that the Customer suffers or incurs as the result of any communication being misdirected, intercepted and/or accessed by third parties, or being lost, delayed or corrupted. GCVS shall not be liable for any losses arising from cybercrime in any form, including without limitation, cyber fraud.

10. CONFIDENTIALITY

10.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five (5) years after termination of the Contract, disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 10.2.

10.2 Each party may disclose the other party's Confidential Information:

10.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this clause 10; and

10.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

10.3 No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

11. ANTI-BRIBERY COMPLIANCE

11.1 The Customer shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption ("**Relevant Requirements**"), including but not limited to the Bribery Act 2010 ("**BA 2010**").

11.2 The Customer shall not engage in any activity, practice or conduct outside the UK which would constitute an offence under sections 1, 2 or 6 of the BA 2010 if such activity, practice or conduct had been carried out inside the UK.

11.3 The Customer shall comply with GCVS's ethics and anti-bribery policies as communicated to the Customer from time to time ("**Relevant Policies**").

11.4 The Customer shall have and shall maintain in place throughout the term of the Contract its own policies and procedures, including adequate procedures under the BA 2010, to ensure

compliance with the Relevant Requirements, the Relevant Policies and will enforce them where appropriate.

- 11.5 The Customer shall promptly notify GCVS in writing any request or demand for any undue financial or other advantage of any kind received by Customer in connection with the performance of this Contract.
- 11.6 The Customer shall immediately notify GCVS in writing if a foreign public official becomes an officer or employee of the Customer or acquires a direct or indirect interest in the Customer, and the Customer warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of the Order.
- 11.7 For the purpose of this clause 11, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

12. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 12.1 Nothing in the Contract shall operate to exclude or limit either party's liability for: (a) death or personal injury caused by its negligence; or (b) fraud; or (c) any other liability which cannot be excluded or limited under applicable law.
- 12.2 Subject to clause 12.1, GCVS shall not be liable to the Customer, whether in contract, delict (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for: loss of profits; loss of anticipated profits; loss of sales or business; loss of agreements or contracts; loss of anticipated savings; loss of use or corruption of, or damage to, software, data or information; loss or damage to goodwill; and any indirect or consequential loss.
- 12.3 Subject to clause 12.1, GCVS's total aggregate liability to the Customer, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the Charges paid under the Contract in the preceding six (6) months.
- 12.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 11C to 11E of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 12.5 Unless the Customer notifies GCVS that it intends to make a claim in respect of an event within the notice period, GCVS shall have no liability for that event. The notice period of any event shall start on the day on which the Customer become, or ought reasonably to have become, aware of the event having occurred and shall expire six (6) months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 12.6 This clause 12 shall survive termination of the Contract.

13. TERMINATION

- 13.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 13.1.1 the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of fourteen (14) days after being notified in writing to do so;
 - 13.1.2 the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
 - 13.1.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words “it is proved to the satisfaction of the court” did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
 - 13.1.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 13.1.5 the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
 - 13.1.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 13.1.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
 - 13.1.8 the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
 - 13.1.9 a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
 - 13.1.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party’s assets and such attachment or process is not discharged within 14 days;

- 13.1.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2.2 to clause 13.2.9 (inclusive);
 - 13.1.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - 13.1.13 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 13.2 Without affecting any other right or remedy available to it, GCVS may terminate the Contract and/or one or more of the Services, or part thereof, (at GCVS's discretion), without liability to GCVS, with immediate effect by giving written notice to the Customer if:
- 13.2.1 the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven (7) days after being notified in writing to make such payment;
 - 13.2.2 there is a change of control of the Customer;
 - 13.2.3 the Customer commits any breach (whether material or otherwise, and/or whether capable of remedy or otherwise) of clauses 9, 10 or 11;
 - 13.2.4 GCVS is unable to provide one or more of the Services (or part thereof), in its opinion, due to any act, omission or default of any relevant sub-contractor and/or any unavailability of any relevant sub-contractor from time to time; and/or
 - 13.2.5 performance of one or more of the Services (or part thereof) would, in GCVS's opinion, be unduly onerous or commercially unreasonable due to any act, omission or default of any relevant sub-contractor and/or any unavailability of any relevant sub-contractor from time to time.
- 13.3 GCVS may terminate the Contract and/or one or more of the Service(s) (or part thereof), without liability to GCVS, at any time by giving one (1) months' written notice to that effect.

14. CONSEQUENCES OF TERMINATION

- 14.1 On expiry or termination of the Contract for any reason the Customer shall:
- 14.1.1 immediately return to GCVS all GCVS Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then GCVS may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract; and
 - 14.1.2 shall immediately pay to GCVS: (a) all of GCVS's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, GCVS will submit an invoice, which shall be payable by the Customer immediately on receipt; (b) any deferred and/or postponed and/or staged Charges for Services supplied which shall, on termination for any reason, immediately become due and payable in full; and (c) any non-refundable third party charges.

14.2 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

14.3 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

15. TUPE

15.1 The Customer and GCVS believe that the provision of the Services under the Contract will not constitute a relevant service provision change within the meaning of the Employment Regulations. However, in the event that there is a relevant service provision change to which the Employment Regulations apply at the commencement date of any of the Services, GCVS will become the employer of any Employees who fall within the Employment Regulations. In this case the Customer represents, warrants and undertakes to GCVS that:

15.1.1 no persons are employed or engaged in the provision of the Services other than the Employees;

15.1.2 none of the Employees has given or received notice terminating their employment or will be entitled to give notice as a result of the provisions of the Contract;

15.1.3 full particulars of the terms of employment of all the Employees (including all remuneration, incentives, bonuses, expenses and other payments and benefits whatsoever payable other than the pension benefits of any Employees have been provided to GCVS no later than 28 days before the commencement date of the relevant Services;

15.1.4 there is not in existence any contract of employment with directors or employees of the Customer (or any contract for services with any individual) relating to the Services which cannot be terminated by three months' notice or less without giving rise to the making of a payment in lieu of notice or a claim for damages or compensation (other than a statutory redundancy payment or statutory compensation for unfair dismissal);

15.1.5 in relation to each of the Employees (and so far as relevant to each of its former employees who were employed or engaged in the provision of the Services) the Customer has:

(a) complied with all obligations imposed on it by Articles of the Treaty on the Functioning of the European Union, European Commission Regulations and Directives and all statutes, regulations and codes of conduct relevant to the relations between it and its employees or it and any recognised trade union or appropriate representatives;

(b) maintained adequate and suitable records regarding the service of each of its employees;

(c) calculated and paid all holiday pay for periods of holiday taken under regulation 13 of the Working Time Regulations 1998 (SI 1998/1833) in accordance with the Directive 2003/88/EC of the European Parliament and

of the Council of 4 November 2003 concerning certain aspects of the organisation of working time;

- (d) complied with all collective agreements and customs and practices for the time being dealing with such relations or the conditions of service of its employees; and
 - (e) complied with all relevant orders and awards made under any statute affecting their conditions of service;
- 15.1.6 the Customer has not been involved in any industrial or trade disputes in the last three years and to the best of the Customer's knowledge, information and belief there are no circumstances which may result in any industrial dispute involving any of the Employees and none of the provisions of this Contract including the identity of GCVS is likely to lead to any industrial dispute;
- 15.1.7 there is not outstanding any agreement or arrangement to which the Customer is party in relation to the Employees for profit sharing or for payment to any of the Employees of bonuses or for incentive payments or other similar matters;
- 15.1.8 the Customer has not entered into any recognition agreement with a trade union in relation to the Employees nor has it done any act which may be construed as recognition;
- 15.1.9 the Customer has complied with all recommendations made by the Advisory Conciliation and Arbitration Service in relation to the Employees and with all awards and declarations made by the Central Arbitration Committee in relation to the Employees;
- 15.1.10 there is no agreement, arrangement, scheme or obligation (whether legal or moral) for the payment of any pensions, allowances, lump sums or other like benefits on redundancy, on retirement or on death or during periods of sickness or disablement for the benefit of any of the Employees or former employees employed or engaged in the provision of the Services or for the benefit of dependants of such persons;
- 15.1.11 no amounts due to or in respect of any of the Employees (including PAYE and National Insurance and pension contributions) are in arrears or unpaid;
- 15.1.12 no monies or benefits other than in respect of contractual emoluments are payable to any of the Employees and there is not at present a claim, occurrence or state or affairs which may hereafter give rise to a claim against the Customer arising out of the employment or termination of employment of any of the Employees for compensation for loss of office or employment or otherwise and whether under contract or any statute or regulations or otherwise;
- 15.1.13 the Customer has provided the Employee Liability Information to GCVS regarding each of the Employees either in writing or by making it available to GCVS in a readily accessible form;

- 15.1.14 the Employee Liability Information contains information as at a specified date not more than 14 days before the date on which the information was provided to GCVS;
 - 15.1.15 the Customer has notified GCVS in writing of any change in the Employee Liability Information since the date on which it was provided; and
 - 15.1.16 the Employee Liability Information was provided not less than 28 days before the commencement date of the relevant Services.
- 15.2 The Customer shall indemnify GCVS in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by GCVS including all legal expenses and other professional fees (together with any VAT thereon) in relation to:
- 15.2.1 the termination by the Customer of the employment of any of the Employees;
 - 15.2.2 anything done or omitted to be done in respect of any of the Employees which is deemed to have been done by GCVS by virtue of the Employment Regulations; and
 - 15.2.3 any claim made at any time by any employee of the Customer other than the Employees who claim to have become an employee of or have rights against GCVS by virtue of the Employment Regulations (together the **Claims**);
- provided that such costs, claims, expenses and liabilities are not payable as a result of any act or omission of GCVS.
- 15.3 The Customer shall procure that its employees, agents and successors in title shall promptly:
- 15.3.1 take such action in connection with the Claims as GCVS shall from time to time reasonably request;
 - 15.3.2 provide free of charge all such assistance and information as GCVS may reasonably request relating to the Claims to enable the Claims to be pursued;
 - 15.3.3 subject to any restriction imposed by law, provide GCVS, its legal and other advisers with access to all documents, records or other information held by GCVS relating to the Claims;
 - 15.3.4 provide GCVS and/or its professional advisers and experts with access from time to time to such members of staff as may be necessary to assist GCVS with the preparation of its cases in relation to the Claims;
 - 15.3.5 permit and require such employees as GCVS and/or its professional advisers may reasonably request to meet with GCVS and/or its legal advisers in normal working hours to prepare witness statements for trial, attend meetings with Counsel or experts and/or to attend any court hearing or trial in connection with the Claims for so long and as frequently as GCVS and/or its legal or other professional advisers may reasonably require;
 - 15.3.6 provide such other assistance as GCVS may reasonably request in order to ensure the due and timely prosecution of the Claims;

- 15.3.7 resist in connection with the Claims any request for documents, information, access to relevant premises or to employees of the business by any third party without first informing GCVS and obtaining its agreement to any approval of the request; and
- 15.3.8 preserve and not waive legal professional privilege or any other privilege attaching to any of the documents or other information relating to the Claims in their possession without first obtaining GCVS 's consent to such waiver, such consent not to be unreasonably withheld.
- 15.4 All salaries and other emoluments including holiday pay, taxation and National Insurance contributions and contributions to retirement benefit schemes relating to the Employees shall be borne by the Customer up to and including the commencement date of the relevant Services and by GCVS with effect from commencement date of the relevant Services.
- 15.5 If the Employment Regulations apply to transfer the employment of any person employed by the Customer or any previous supplier to GCVS then if GCVS shall serve a notice terminating the employment of such person within 90 days after the date of such transfer, the Customer shall indemnify GCVS (for itself and any previous supplier) in respect of any statutory or contractual redundancy payment payable in respect of such person, and any compensation or damages which the GCVS is obliged to pay to such person for unfair and/or wrongful dismissal or as a reasonable settlement of a claim for such compensation or damages.
- 15.6 The parties acknowledge and agree that where all or part of the Services cease to be provided by GCVS for any reason and where all or part of the Services continue to be provided by the Customer and/or a New Supplier, there may be a relevant transfer of the Returning Employees to the Customer and/or the New Supplier for the purposes of the Employment Regulations. If there is such a transfer, the employment of the Returning Employees shall transfer to the Customer and/or the New Supplier in accordance with the Employment Regulations with effect from the Subsequent Transfer Date.

16. OTHER

- 16.1 **Notices:** Any notice given to a party under or in connection with the Contract shall be in writing and shall be (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or (b) sent by email to the following addresses (or such other addresses as notified from time to time): GCVS: peopleservices@gcvs.org.uk for notices related to H&S Services and/or HR Services or tsst@gcvs.org.uk for notices related to Payroll Services; Customer: any email address provided by the Customer from time to time. Any notice shall be deemed to have been received: (a) if delivered by hand, at the time the notice is left at the proper address; (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or (c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 16.2 **Publicity:** The Customer agrees GCVS may publicly identify the Customer as its customer and/or as a recipient of its Services.

- 16.3 **Assignment and other dealings:** The Customer shall not assign, transfer, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract. GCVS may at any time assign, transfer, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with any or all of its rights under the Contract without prior notice to the Customer.
- 16.4 **Third Party Rights:** Unless it expressly states otherwise, the Contract does not give rise to rights under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce any term of the Contract.
- 16.5 **Variation:** No variation of the Contract shall be effective unless it is in writing and signed by GCVS. Without limitation to clauses 5.12 or 5.13, GCVS may at any time vary these Conditions and/or the terms of the Service Level Agreement upon thirty (30) days' prior written notice to the Customer (which notice may be sent by email) ("**Variation Notice Period**"). The Customer's failure to object in writing to GCVS's notice within the Variation Notice Period shall constitute approval by the Customer of the varied terms, and those variations shall apply to the Contract from the day following expiry of the Variation Notice Period. If the Customer objects in writing within the Variation Notice Period, then the parties shall negotiate in good faith to agree replacement provisions and/or either party may terminate the Contract upon one (1) months' written notice to the other party (which notice may not be served until expiry of the Variation Notice Period). For the avoidance of doubt, this clause 16.5 does not apply to clauses 5.12 or 5.13, and clauses 5.12 or 5.13 shall always have precedence.
- 16.6 **Waiver:** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.7 **Severance:** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part-provision of the Contract is deemed deleted under this clause 16.7, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 16.8 **No partnership or agency:** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 16.9 **Force Majeure:** Provided it has complied with this clause 16.9, if a party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event ("**Affected Party**"), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly. The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party. The

Affected Party shall: (a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than five (5) Business Days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than ten (10) Business Days, the party not affected by the Force Majeure Event may terminate the Contract immediately by giving written notice to the Affected Party.

16.10 **Governing Law:** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation are governed by and construed in accordance with the law of Scotland.

16.11 **Jurisdiction:** Each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

PART 2: SPECIFIC TERMS FOR MEMBERSHIP PLUS

17. DURATION OF SERVICES AND CHARGES FOR MEMBERSHIP PLUS CONTRACTS

17.1 Where the Customer has entered into a Membership Plus Contract with GCVS, the following shall apply:

17.1.1 this Part 2 shall have precedence over any conflicting terms in Part 1, Part 3 and/or Part 5;

17.1.2 the Charges for the HR Service and Payroll Service shall be determined by the terms of the Membership Plus Contract; and

17.1.3 the HR Service and Payroll Service shall commence on the date specified in the Membership Plus Contract and shall continue for such period of time as specified in the Membership Plus Contract.

PART 3: SPECIFIC TERMS FOR HR SERVICE

18. DURATION OF HR SERVICE

18.1 The HR Service shall commence on the date outlined in the relevant Service Level Agreement (or as otherwise notified by GCVS) and, unless terminated earlier in accordance with clause 13, shall continue for one (1) year and thereafter shall automatically renew every three (3) months unless and until the Customer provides at least three (3) months' written notice of termination to GCVS.

19. PAYMENT TERMS FOR HR SERVICE

19.1 The Customer shall pay the Charges for the HR Service by way of direct debit unless otherwise agreed by GCVS in writing in advance.

PART 4: SPECIFIC TERMS FOR H&S SERVICE

20. DURATION OF H&S SERVICE

20.1 The H&S Service shall commence on the date outlined in the relevant Service Level Agreement (or as otherwise notified by GCVS) and, unless terminated earlier in accordance with clause 13, shall continue for one (1) year and thereafter shall automatically renew every three (3) months unless and until the Customer provides at least three (3) months' written notice of termination to GCVS.

21. PAYMENT TERMS FOR H&S SERVICE

21.1 The Customer shall pay the Charges for the H&S Service by way of direct debit unless otherwise agreed by GCVS in writing in advance.

PART 5: SPECIFIC TERMS FOR PAYROLL SERVICE

22. DURATION OF PAYROLL SERVICE

22.1 The Payroll Service shall commence on the date outlined in the relevant Service Level Agreement (or as otherwise notified by GCVS) and, unless terminated earlier in accordance with clause 13, shall continue until the Customer provides one (1) months' written notice of termination to GCVS.

23. PAYMENT TERMS FOR PAYROLL SERVICE

23.1 Charges for the Payroll Service shall be deducted by GCVS from the existing balance in GCVS In-Trust account and any shortfall shall be paid by the Customer to GCVS immediately upon receipt of notice of the shortfall.

24. AGENT AUTHORISATION

24.1 The Customer appoints GCVS to be its attorney in its name and on its behalf to execute documents, use the Customer's name and do all things which are necessary to enable GCVS to perform the Payroll Service. The Customer undertakes to ratify and confirm everything that GCVS does or arranges or purports to do or arrange in good faith in exercise of any power granted under this clause 24.1.

24.2 The Customer acknowledges, agrees, represents and warrants that appointing GCVS as an authorised agent or attorney will not transfer any legal obligations from the Customer to GCVS, and GCVS does not assume any liability or legal obligation on behalf of the Customer. The Customer remains solely liable for ensuring that all reports, information and forms submitted to any governmental body or regulator are accurate and true.

24.3 Without limitation to the generality of clause 24.1, where, as part of the Payroll Service, GCVS is to act as an authorised agent of the Customer with HMRC, the Customer shall promptly and accurately complete, validly execute and submit to HMRC (and/or GCVS if requested by GCVS) all documents and authorisations as required, including without limitation, any applicable Form 64-8 and/or Form FBI2. The Customer acknowledges, agrees, represents and warrants GCVS shall not be liable to perform the Payroll Service prior to GCVS being accepted by HMRC as an authorised agent of the Customer.

24.4 Without limitation to the generality of clause 24.1, where, as part of the Payroll Service, GCVS is to act as nominated secondary agent of the Customer with The Pensions Regulator, the Customer shall promptly and accurately complete, validly execute and submit to The Pension Regulator (and/or GCVS if requested by GCVS) all documents and authorisations as required. The Customer acknowledges, agrees, represents and warrants

GCVS shall not be liable to perform the Payroll Service prior to GCVS being accepted by The Pensions Regulator as a nominated agent of the Customer.

25. IN-TRUST ACCOUNT

- 25.1 If as part of the Payroll Service GCVS is to hold money on behalf of the Customer, GCVS will use reasonable endeavours to seek to open an 'In Trust' bank account with GCVS's banking institution (usually the Co-Operative Bank) in the Customer's name.
- 25.2 The Customer shall, and shall procure that its personnel and any necessary third party shall, promptly execute such documents and perform such acts as may reasonably be required by GCVS for the purpose of opening, maintaining and/or closing the In-Trust bank account.
- 25.3 If GCVS is required to hold money on behalf of the Customer, GCVS shall not be responsible or liable for any loss that is attributable to the mistake, failure, insolvency or loss of licence by the relevant banking institution (including the inability or failure of that institution to pay its debts such as any balance on our client account as they fall due and/or otherwise become payable), nor to any failure of the banking or inter-bank systems, nor to exchange rate fluctuations. If a negative interest rate or other charge is applied to any funds that held for the Customer, GCVS shall be entitled to deduct those sums from such funds and the Customer shall be responsible for any resulting shortfall in the funds.
- 25.4 The Customer shall keep the In-Trust bank account in sufficient funds to enable GCVS effect any transfer required to perform the Payroll Service, and all in accordance with the payroll deadline calendar and GCVS's instructions from time to time.
- 25.5 In the event that the Customer does not have sufficient cleared funds in the In-Trust bank account by the relevant payroll deadline, GCVS shall not be obliged to perform the Payroll Service and GCVS shall not be liable to the Customer for any non-performance, and additional charges may be payable by the Customer.

26. INSTRUCTION AND APPROVAL PROCESS

- 26.1 GCVS relies on the Customer to provide GCVS with full and accurate information and instructions in relation to the Payroll Service at all times. GCVS shall not be required to perform the Payroll Service, nor shall it be liable for any non-performance, without appropriate instructions from the Customer.
- 26.2 Instructions and approvals shall be given by the Customer in writing only and GCVS will not accept verbal instructions or approvals.
- 26.3 The Customer shall identify, in writing, any limitation in the number or identity of directors, officers, trustees, or employees who are authorised to issue GCVS with instructions or approvals. In the absence of any such written identification, there will be deemed to be no such limitation and GCVS shall be authorised to accept instructions from any person at the Customer's organisation. The Customer shall notify GCVS of any changes in authorised contacts or signatories immediately in writing by completing and submitting to GCVS a 'Client Contact Sheet' (or such other form or method as GCVS may notify from time to time).
- 26.4 Where the Customer comprises more than one person or legal entity, GCVS may, unless otherwise agreed in writing, take instructions from any one of the legal entities on behalf of the others, and each such person or legal entity shall be jointly and severally liable for GCVS's fees and expenses.

26.5 Like many organisations, GCVS may use spam filters, so there is a risk that legitimate correspondence from the Customer may be filtered out, and accordingly the Customer shall not assume that every email or electronic communication sent to GCVS will be received and/or read by GCVS. The Customer shall follow up any important communications that it sends with a phone call to confirm or ensure receipt by GCVS.

27. DISCLAIMER

27.1 The Customer accepts and acknowledges that GCVS is not a financial advisor, financial authority, nor an accountants or auditing firm, and does not have qualified expertise in pension matters and GCVS does not represent or hold itself out as having such standing or expertise, and accordingly, the Customer agrees to hold harmless, waive and release GCVS and its officers, agents, representatives, and successors from any responsibility, liabilities, demands, or claims of any kind arising from GCVS's standing and expertise.

28. ON-BOARDING THE PAYROLL SERVICE

28.1 In the event the Customer is transferring part or all of its payroll function from a previous supplier and/or from the Customer to GCVS, the Customer shall, if requested by GCVS:

28.1.1 provide all assistance required by GCVS to facilitate the smooth transition of the payroll function to GCVS; and

28.1.2 procure that the previous supplier of the Customer shall provide all assistance required by GCVS to facilitate the smooth transition of the payroll function to GCVS.

28.2 The Customer understands and agrees that GCVS has no liability and/or responsibility for any actions or omissions of the previous supplier. The Customer agrees, to hold harmless, waive and release GCVS and its officers, agents, representatives, and successors from any responsibility, liabilities, demands, or claims of any kind arising out of any actions or omissions of the previous supplier.

29. ANTI-MONEY LAUNDERING CHECKS

29.1 The Customer understands and agrees that GCVS may be prohibited by law from providing the Payroll Service before the satisfactory completion of anti-money laundering checks by GCVS and therefore the Customer shall comply, and shall procure that its applicable personnel (including without limitation, those persons listed on the completed 'Customer Contact Sheet' from time to time) shall comply, with all requests made by GCVS in relation to such checks and in a timely manner.

29.2 The Contract shall not be deemed to have come into force until GCVS is able to satisfy itself regarding any evidence of identity, the source and legitimacy of funds or wealth, or any other aspect of customer due diligence.

29.3 If at any time GCVS is unable to satisfy itself regarding any evidence of identity, the source and legitimacy of funds or wealth, or any other aspect of customer due diligence, it may at its sole discretion terminate the Contract, and/or cease to perform the Payroll Service and/or suspend performance of the Payroll Service (either for a period of time or altogether) until GCVS has received evidence and/or information that is satisfactory to GCVS.